Office - Supreme Court, U.S.
FILED
JAN 14 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-91

In the Supreme Court of the United States

OCTOBER TERM, 1982

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

PADUNGSRI PHINPATHYA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

BERT D. GREENBERG
8484 Wilshire Boulevard
Suite 730
Beverly Hills, California
90211
(213) 655-4900

PETITION FOR CERTIORARI FILED JULY 16, 1982
CERTIORARI GRANTED NOVEMBER 1, 1982

TABLE OF CONTENTS

	Page
Docket entries in court of appeals	1
Transcript of hearing, dated March 1, 1978	3
Transcript of hearing, dated September 6, 1978 (in part)	12
Order to show cause and notice of hearing	29
Application for suspension of deportation	31
Affidavit of Padungsri Phinpathya	35
Report of Investigation, with Exhibit "B"	37
Amendment to order to show cause	43
Order allowing certiorari	44

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

80-7454

I & NS # A21-272-984 & A19-063-381

RELEVANT DOCKET ENTRIES

1980	
AUG 25	Paid Fee. —vt—
AUG 25	Filed Petition for review of an order of the I&NS. —vt—
AUG 25	Docketed cause & entd appearance of counsel. —vt—
AUG 25	Notified counsel for the respondent issued copies. —vt—
OCT 27	Filed as of 10/8 cert admin record on appeal in one vol, pldgs four cert copies pv
OCT 27	Petnre oepngn brief due 8 December 1980 pv
DEC 9	Filed Mot & Ord (Clk) granting petrs an ext of time to Dec. 31. 1980 to file opening brief. jc
1981	
JAN 12	Filed orig & 15 Pet opening brief (12/31). pf
FEB 6	Fld mtn & ord (CLK) gtng Respondent ext of time to file its Answering brief to: 2-9-81. bbm
FEB 11	Filed org & 4 Resp ans brief (2/9). pf
FEB 13	Rec'd Resp Statement of Related Cases (to CASE-FILE). pf
APR 29	Rec'd respondent's addl. authorities. (panel) 4/28 —dmf—
APR 29	Filed order (Banby) Counsle are requested to address in their oral arguments the effect, if any, upon the present proceedings of the decision of the Supreme Court in INS v. Wang, 49 U.S. Law Week 3640 (3/2/81). —vt—
MAY 6	Argued & submitted before: WCC, SR, CJJ; & Pfaelzer, DJ (C. Cal.)
OCT 1	As of Oct 1, Ordered opinion filed (Reinhart) & judg to be filed
OCT 1	Filed as Oct 1, Filed—Opinion The order of the BIA is reversed as to both petitioners and remanded for proceeding consistent with this opinion. —ho—
OCT 1	As of Oct 1, Filed & Entd Judgment. —ho—
OCT 15	Filed respondent's motion for ext of time to file petition for rehearing. (panel) 10/13 —dmf—
NOV 23	Rec'd resp petition for rehearing & suggestion for rehearing en banc. (panel) (motion pending)

NOV 27	Filed order (CANBY, REINHARDT & PFAELZER) The petition for rehearing & suggestion for rehearing en banc heretofore rec'd is now filed. —vt—
NOV 27	Filed resp petition for rehearing & suggestion for rehearing en banc.
DEC 28 1982	Stay mandate (Wallace) per Oscar T. ck
APR 7	Filed, as of 4/5/82, Order (Canby, Reinhardt, CJJ; Pfaelzer, DJ) The panel as constituted above has voted to deny the petition for rehearing. Judges Canby and Reinhardt voted to reject the suggestion for rehearing en banc and Judge Pfaelzer made no recommendation as to the suggestion for rehearing en banc. The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on the suggestion for rehearing en banc. (FRAP 35(b). The petition for rehearing is denied and the suggestion for rehearing en banc in rejected. The panel has voted to file the attached Amended Opinion amending the Opinion as decided October 1, 1981. ck
APR 7	As of 4/5/82, Filed Amended Opinion. ck
APR 16	MANDATE ISSUED
23	Recvd SC notice of filing petition for cert on 7/16/82, SC #82-91. pn
5	Filed certified copy of SC order of 11/1/82, granting cert. (copies to panel) pn

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

File A-19 063 381
21 272 984

MATTER OF NIYOM PHINPATHYA AND
PADUNGASRI PHINPATHYA, RESPONDENTS

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Robert T. Griffin, Immigration Judge
Date: CONTINUED: March 1, 1978 Place: Los Angeles, CA
Transcribed by Victoria Maillet By Sony
Official Interpreter Rabin Sinskul
Language: Thai

APPEARANCES:

For the Service:
Thomas Fong, Esq.
Los Angeles, CA

For the Respondent:
Steven D. Karp, Esq.
8484 Wilshire Boulevard,
Suite 730
Beverly Hills, CA 90211

[8] IMMIGRATION JUDGE TO RESPONDENTS THROUGH INTERPRETER:

Q Are you the same Mr. and Mrs. Phinpathya who were last before me on May 16, 1977?

A Yes, we did.

Q The purpose of this continued hearing is again to consider whether or not you two should be deported from the United States. Do you both understand?

A Yes, (by both) your Honor.

Q Would you both stand please and raise your right hand to be sworn? (both comply). Do you and each of you solemnly swear all testimony in this proceeding to be the truth, the whole truth and nothing but the truth, so help you God?

A Yes. (by both).

JUDGE TO MR. FONG:

Mr. Fong at the last hearing the cases were adjourned for the investigation of the suspension applications. I assume that's been completed?

MR. FONG:

Yes, it has your Honor.

JUDGE:

May I first have the suspension applications themselves? And we will go off the record while they are brought up to date.

OFF THE RECORD BACK ON THE RECORD

JUDGE TO RESPONDENTS:

Q You are both still living at 7515 Belaire Avenue, North Hollywood, California. Is that true?

[9] A True, your Honor.

JUDGE TO MALE RESPONDENT:

Q You came in 1968 as a student and you were inspected and admitted in Honolulu. Is that true?

A That's true your Honor.

JUDGE TO FEMALE RESPONDENT:

Q You entered the United States in 1969 at Honolulu, Hawaii and was inspected and admitted also as a student. Is that true?

A That's true your Honor.

JUDGE TO RESPONDENTS:

Q Neither one of you have been out of the United States at any time since you arrive here in 1968 and 1969. Is that true?

A That's true your Honor.

JUDGE TO MALE RESPONDENT:

Q You have been working at Ralph's Grocery Company in Sunland as a clerk since 1968. Is that true? Earning approximately $250.00 a week. Is that true?

A Yes, that's true.

JUDGE TO FEMALE RESPONDENT:

Q You have not been working. Is that true?

A That's true your Honor.

Q You do work at your husband's separate business, the Premiere Coffee Shop in Hollywood, California. Is that true?

A It's true your Honor.

JUDGE TO MALE RESPONDENT:

Q You have this Premiere Coffee Shop business in addition to your [10] regular job at Ralph's Grocery. Is that true?

A That's true your Honor.

JUDGE TO RESPONDENTS:

Q Is this your first marriage?

A Yes, your Honor (by both).

JUDGE TO MALE RESPONDENT:

Q Your assets total about $69,000.00. Is that true?

A That's true, your Honor.

JUDGE TO RESPONDENTS:

Q You have two children born here in California now aged 7 and 6. Is that true?

A Yes (by both) your Honor.

Q Have either one of you ever received any welfare?

A No (by both) your Honor.

JUDGE TO MALE RESPONDENT:

Q Have you ever belonged to any organizations except the three listed on your application?

A No, your Honor.

JUDGE TO FEMALE RESPONDENT:

Q Have you ever belonged to any organizations?

A No, your Honor.

JUDGE TO RESPONDENTS:

Q Have you ever been member of or associated with the Communist Party?

A No (by both) your Honor.

Q Have either one of you ever been arrested by the police or convicted of any crime in any country in the world?

[11] A Never (by both) your Honor.

JUDGE TO MALE RESPONDENT:

Q Your father is deceased. Is that correct?

A That's correct, your Honor.

Q Your mother and your brother live in Thailand. Is that true?

A That's true, your Honor.

Q Do you have any other brothers or sisters?

A No, your Honor.

JUDGE TO FEMALE RESPONDENT:

Q Your father and mother, two sisters and three brothers live in Thailand. Is that true?

A That's true your Honor.

Q You also have a brother who is living here in Los Angeles, California. His name is Songsak (sic). Is that true?

A That's true, your Honor.

Q Your brother Sonsak is not a citizen of the United States or a lawful permanent resident of the United States. Is that true?

A Yes, your Honor.

JUDGE TO RESPONDENTS:

Q Would you each stand one more time please to be sworn to these applications? (Both comply). Do you and each of you solemnly swear that all statements in these application Forms I-256A are the truth, the whole truth and nothing but the truth, so help you God?

A Yes (by both) your Honor.

Q Thank you, please be seated.

[12] JUDGE:

The application for suspension of deportation Form I-256A for the male respondent Niyom Phinpathya is marked *Exhibit No. 2* in evidence. The application for suspension of deportation Form I-256A for his wife, Padungasri, is marked *Exhibit No. 2A* in evidence. I also have an affidavit of witness Randall Kent Cindrich in behalf of the male respondent; the affidavit being executed on March 2, 1977. This affidavit is marked *Exhibit No. 3* in evidence. An affidavit executed by Donna Cindrich on March 2, 1977 is marked *Exhibit No. 4* in evidence. Affidavit of Somchai Singhapnttanapong executed on March 4, 1977 on behalf of male respondent is marked *Exhibit No. 5* in evidence. Affidavit of Malinee Koopirom executed on March 4, 1977 in behalf of the female respondent is marked *Exhibit No. 6* in evidence. Affidavit of Voravut Uttayaya executed on March 7, 1977 on behalf of the female respondent is marked *Exhibit No. 7* in evidence. I also have a birth certificate for the respondent's child Nissa; born in Los Angeles on September 11, 1970. This birth certificate is marked *Exhibit No. 8* in evidence. The birth certificate of respondents' child Nelson; born in Los Angeles on February 19, 1972 is marked *Exhibit No. 9* in evidence. Also submitted is a three page affidavit executed by the male respondent, Niyom Phinpathya, executed on March 4, 1977. This affidavit is marked *Exhibit No. 10* in evidence. And finally, a three page affidavit executed by the female respondent, Padungasri Phinpathya, executed on March 4, 1977. This three page affidavit is marked *Exhibit No. 11* in evidence.

[13] JUDGE TO MR. FONG:

Mr. Fong you have indicated that the investigation has been completed. Has counsel had an opportunity to read it?

MR. FONG:

No, he has not your Honor.

JUDGE:

We will go off the record while counsel and respondents have an opportunity to read the report of investigation.

OFF THE RECORD BACK ON THE RECORD

JUDGE TO MR. KARP:

Counsel you had an opportunity to read the report?

MR. KARP:

I have had an opportunity to read the report, your Honor. I have noticed that there is a copy of a Form I-94 in that report for the female respondent that showed that she entered the United States in 1974. I have just had time to speak to the female respondent privately and she says that she does now remember that she did enter the United States in 1974 and therefore we are withdrawing her suspension application.

JUDGE TO MR. FONG:

Mr. Fong, I assume you are going to offer that in evidence at this time.

MR. FONG:

Yes, I am. Your Honor, do I make a statement as to the remarks of the respondents' attorney now or later?

[14] JUDGE:

You can make it now if you wish.

MR. FONG:

I submit that the statements made by the female respondent were under oath and she perjured herself on the record.

MR. KARP:

Your Honor, I'll object to that. This is not a criminal proceeding and I don't feel that perjury is the proper charge at this particular instance.

MR. FONG:

Well, it is definitely not a mistake as

MR. KARP:

It's not the truth. it's a mistake.

JUDGE TO MR. KARP:

May I have the investigator report? I assume you have no objection counsel?

MR. KARP:

No, I have no objection.

JUDGE:

The report of investigation dated September 19, 1977 consisting of three pages and sub Exhibits A, B and C; these documents are all collectively marked *Exhibit No. 12* in evidence. I will now read the report.

JUDGE TO MR. FONG:

Mr. Fong if the Government had noticed the female respondent's last entry was April 18, 1974 as reflected in sub Exhibit B to Exhibit 12, [15] the report of investigation. Why did they charge her in the Order to Show Cause issued in 1977 as the last entry being 1969?

MR. FONG:

Your Honor, until the investigation was initiated on their suspension applications the Government was not aware that she had another entry in Honolulu, Hawaii until that date. I assume therefore that the I-213 stating the 1969 entry as her latest entry was given to the Government by the respondent.

JUDGE:

Yes, the Order to Show Cause indicates her entry as October 11, 1969 and that's what she admitted. And she admitted deportability. Do you wish to lodge a new allegation No. 3 in the female respondent's case?

MR. FONG:

Yes, I do, your Honor.

JUDGE:

We will stand in recess for that purpose.

OFF THE RECORD BACK ON THE RECORD

JUDGE:

Let the record show that the trial attorney has handed me the lodged charge Form I-261 dated today in the female respondent's case with new allegations 3 and 4.

JUDGE TO MR. KARP:

Counsel has this been served upon you and the female respondent?

MR. KARP:

I have a copy your Honor, yes.

[16] JUDGE:

The lodged charge Form I-261 is marked *Exhibit No. 13* in evidence.

JUDGE TO MR. KARP:

Counsel of course you have the right to a continuance before proceeding to this lodged allegation form. Do you wish a continuance or do you waive that right?

MR. KARP:

No, I do wish a continuance your Honor. Your Honor, I'd like to make one other statement. I believe I stated earlier that the female respondent returned to the United States in 1974 and that we were thereby withdrawing her suspension application. I did not mean to state that we were withdrawing her suspension application.

JUDGE:

I see. Your theory would then be that this was a brief absence?

MR. KARP:

Correct, and not a meaningful entry.

JUDGE:

I see.

JUDGE TO MR. FONG:

Mr. Fong, I propose to adjourn this hearing to a later date. Do you have any objection?

MR. FONG:

Yes, I do your Honor. I move to sever the cases and adjudicate the suspension application on the male respondent today.

JUDGE:

The motion is denied. We will keep the cases together at this point [17] until the next hearing. We will go off the record while the Immigration Court Clerk schedules another hearing date for this case.

OFF THE RECORD BACK ON THE RECORD

JUDGE:

This hearing is adjourned to May 9, 1978 at 1 o'clock pm.

JUDGE TO MR. KARP:

Is that date satisfactory counsel?

MR. KARP:

Yes, it is your Honor.

MR. FONG:

Yes, it is your Honor.

JUDGE TO MR. KARP:

Counsel do you waive further notice?

MR. KARP:

Yes, I do.

JUDGE:

The hearing is so adjourned.

HEARING ADJOURNED

I hereby certify that to the best of my knowledge and belief, the foregoing pages 6 through 17 are a complete and accurate transcript of the hearing herein.

VICTORIA MAILLET 5-10-79

VICTORIA MAILLET *Clerk DMT*

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

File A-19 063 381
21 272 984
MATTER OF NIYOM PHINPATHYA AND
PADUNGASRI PHINPATHYA, RESPONDENTS

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Robert T. Griffin, Immigration Judge
Date: CONTINUED: September 6, 1978
Place: Los Angeles
Transcribed by Victoria Maillet By Sony
Official Interpreter Somnuk Khosavanna
Language Thai

APPEARANCES:

For the Service:
WILLIAM B. ODENCRANTZ, ESQ.
Los Angeles, CA

For the Respondent:
MICHAEL D. ULLMAN, ESQ.
8484 Wilshire Boulevard, Suite 730
Beverly Hills, CA 90211

[18] IMMIGRATION JUDGE TO RESPONDENTS THROUGH INTERPRETER:

Q Are you the same Mr. and Mrs. Phinpathya who were last before me on March 1, 1978?

A Yes.

Q At the last hearing you were represented by Attorney Steven D. Karp. At this hearing you are once again represented by Attorney Michael D. Ullman of the same law firm. Do you want Mr. Ullman to represent you today?

A Yes, sir (by both).

Q Would you both stand please and raise your right hands to be sworn? (both comply). Do you and each of you solemnly swear all testimony in this proceeding to be the truth, the whole truth and nothing but the truth so help you God?

A Yes, (by both).

Q Thank you. Please be seated.

JUDGE TO MR. ULLMAN:

Mr. Ullman at the last hearing on the record on March 1, 1978 the trial attorney at that time submitted a lodged charge form now in evidence as Exhibit No. 13 containing not a new charge but merely two new allegations, numbers 3 and 4. And your colleague at that time, Attorney Steven Karp requested a continuance in order to meet the lodged allegation. Do you waive further reading of the lodged allegations and are you ready to plead at this time?

MR. ULLMAN:

Yes, we do.

[19] JUDGE:

How do you plead to the new allegations 3 and 4?

MR. ULLMAN:

We admit both allegations 3 and 4.

JUDGE:

This of course refers only to the female respondent. Is that correct?

MR. ULLMAN:

That's correct. At this time we would also like to show that this was a brief and casual and innocent de-

parture from the United States and that Mrs. Phinpathya had been in the United States continuously since October 11, 1969 and was gone from the United States for three months.

JUDGE:

So the date on the Order to Show Cause was an earlier entry?

MR. ULLMAN:

That's correct.

JUDGE:

Then you are indicating that you are not abandoning the suspension application in her case.

MR. ULLMAN:

That's correct. Also, in the alternative we would like to have the wife's case considered with the husband as a beneficiary to reunite the family unit.

JUDGE:

Each one has their own separate suspension application in the record.

[20] JUDGE TO MR. ODENCRANTZ:

Mr. Odencrantz, I guess it's obvious but comparing the female's Order to Show Cause with the lodged allegations, you're abandoning allegation 3 and 4 on the Order to Show Cause. Is that correct?

MR. ODENCRANTZ:

That is correct, your Honor. The Government's contends the last entry as so indicated on the lodged charge.

JUDGE:

Right. So all that's left on the Order to Show Cause and the allegations then is 1, 2 and 5.

MR. ULLMAN:

That's correct.

MR. ODENCRANTZ:

1, 2 and 5 on the original and 3 and 4 on the lodged.

JUDGE:

All right, thank you. And of course the charge remains the same.

JUDGE TO MR. ULLMAN:

You're still admitting the charge. Is that correct counsel?

MR. ULLMAN:

That's correct.

JUDGE:

In the female respondent's case.

MR. ULLMAN:

Yes.

JUDGE TO MR. ULLMAN:

Apparently then Mr. Ullman the next step is for you to proceed on [21] the suspension application. Is that correct?

MR. ULLMAN:

That's correct.

MR. ODENCRANTZ TO JUDGE:

Your Honor, if I may, I will indicate that the application as currently in the record, signed and sworn to under oath reflects that the female respondent has no departures from the United States. It is the Government's contention that she is 101(f)(6) and is statutorily ineligible for the relief of suspension of deportation because she has given false testimony before this Court to obtain this benefit.

JUDGE:

You are referring now to the female respondent's suspension application in evidence as Exhibit No. 2A?

MR. ODENCRANTZ:

I am your Honor.

JUDGE TO MR. ULLMAN:

Yes, Mr. Ullman; that was sworn to before me on March 1, 1978.

MR. ODENCRANTZ TO JUDGE:

From my review of the record your Honor, it appears she retracted only after being confronted with the investigative report and after pursuit of that matter by the trial attorney.

JUDGE:

Now this both happened during the same hearing. Is that correct Mr. Odencrantz?—The false statement and the recantation; both on March 1st?

[22] MR. ODENCRANTZ:

Your Honor, my understanding is that she was confronted with this and—at that hearing. And I don't think that it's ever been recanted, so to speak. Her attorney was informed of that and at that time the Service told him they were going to lodge a charge. I don't think the respondent has ever herself recanted the claim that she entered the United States until today's date of course when her new attorney, Mr. Ullman, had pled to the allegations as contained in the lodged charge.

JUDGE:

Well, Mr. Odencrantz, of course you weren't here at the last hearing. There was another trial attorney; just as Mr. Ullman was not here. My notes seem to indicate that Mr. Karp was given an opportunity to read the investigation report off the record when Mr. Fong offered it. And when we came back on the record Mr. Karp indicated that the wife was wrong about the last entry in 1969.

MR. ODENCRANTZ:

My notes reflect that Mr. Karp was first confronted with the situation. He went out and spoke with his clients. He first came in and then when asked by the Immigration Judge if the statements as to no departure was true, he stated they were true. He then went out a second time and talked to his clients and then after the second time he had read the investigative report. I have no record in my notes, which appear to be quite comprehensive, that the respondent herself has ever testified to anything about departures. And other than the plea statement of Mr. Ullman a few moments ago, that her departure was [23] for three months, I don't see anything contained in the record at the present time regarding the length of her departure, the reason for her departure and the reason that she failed to tell the Court of her departure.

JUDGE:

I agree about the notes; my notes don't show that the lady testified either. But they do show that Mr. Karp stated that the wife was wrong about her last entry in 1969 and that the last entry was in fact 1974 as related in the investigation report. In other words counsel was speaking for the record on behalf of the female respondent.

MR. ODENCRANTZ:

I would contend your Honor, at this time, that there's a prima facie show in the 101(f)(6) and she is statutorily ineligible for any discretionary relief, particularly the relief she is now seeking on that record.

JUDGE TO MR. ULLMAN:

Mr. Ullman.

MR. ULLMAN:

I believe at this time I would like to ask for some testimony from the female respondent as to exactly—as to her exits and departures and entries into the United States and the reason for stating so on the application.

JUDGE:

Well, I agree that's what we're here for. Go right ahead Mr. Ullman.

[24] MR. ULLMAN TO FEMALE RESPONDENT:

Q. Mrs. Phinpathya when was the original time you entered the United States?

A When I first arrive here it's October 11, 1969.

Q Since 1969 have you ever departed from the United States?

A Yes, I did.

Q When did you depart the United States?

A Date is unknown but month is January 1974.

Q In January 1974 where did you go?

A To Thailand.

Q Why did you leave the United States at that time?

A I visit my mother.

Q How long were you outside the United States?

A Three months.

Q When did you reenter the United States?

A April.

Q April of 1974?
A Yes.
Q When you left the United States in January 1974 did you intend to give up your residence in the United States?
A Yes.
Q Mrs. Phinpathya I don't believe you understood the question.
MR. ODENCRANTZ:
That's a conclusion your Honor. I think the question could be rephrased without the conclusionary language of the—
[25] JUDGE:
If that's an objection, it's sustained. Ask the question.
MR. ULLMAN TO FEMALE RESPONDENT:
Q Mrs. Phinpathya when you left the United States in January 1974—did you leave the United States and not intend to come back to the United States?
MR. OPENCRANTZ:
Your Honor, I believe the male respondent is speaking to the female respondent.
JUDGE:
Yes, and he's also nodding his head up and down.
JUDGE TO MAKE RESPONDENT:
Q Mr. Phinpathya I want you to stop communicating with your wife. She'll answer her own questions. You'll have your opportunity to answer questions when counsel speaks to you. Do you understand sir?
A Yes, I understand.
JUDGE:
Mr. Ullman.
MR. ULLMAN TO FEMALE RESPONDENT:
Q Mrs. Phinpathya in 1974 was your home in the United States?
A At that time I didn't buy the house yet.
Q But were you living in the United States since 1969?
A Yes.
Q When you left the United States in 1974 did you intend to return to the United States?

A Yes.

[26] Q When you went to visit your mother in 1974 was this for a short visit?

A Yes.

Q When you left the United States in 1974 did you intend to return within a short period of time?

JUDGE:

Let the record show that the respondent is hesitating to answer. Apparently she does not understand the question.

JUDGE TO FEMALE RESPONDENT:

Q Mrs. Phinpathya if at any time you do not understand a question, please say—I don't know. Do you understand that?

A Yes.

Q Or, if it applies, say—I don't understand the question. Do you understand that?

A Yes.

JUDGE:

Go ahead Mr. Ullman.

MR. ULLMAN TO FEMALE RESPONDENT:

Q Mrs. Phinpathya in 1974 . . . at that time you had two children in the United States. Is that correct?

A Yes. That's correct.

Q And you husband was in the United States at that time also?

A Yes.

Q You decided to visit your mother in 1974. Was that for a short visit?

A Yes sir.

[27] Q In January of 1974 when you left the United States, in your mind, were you planning on coming back to the United States?

A Yes.

Q What did you consider your home? Was your home here in the United States or was it in Thailand?

MR. ODENCRANTZ:

Your Honor, I think the question is objectionable, as leading. I will indicate to the Court, however, that she did reenter the United States with an F status

where of course she had to have a foreign residence abroad which she had no intention of abandoning. Otherwise when she entered the United States at that time she would have been committing fraud at entry.

JUDGE:

Mr. Odencrantz you'll get your opportunity in a moment to—

MR. ODENCRANTZ:

Your Honor, my objection is to the frame of the question.

JUDGE TO MR. ULLMAN:

Counsel you're not pinning down the question to 1974. You're talking about her intended residence. Maybe you'd better rephrase it again and be sure that you pinpoint 1974 in your question.

MR. ULLMAN TO FEMALE RESPONDENT:

Q Mrs. Phinpathya in your application for suspension of deportation, it stated that you arrived in the United States October 11, 1969. And that you had made no departures from the United States. Was that true? Have you ever departed the United States since 1969?

[28] JUDGE:

I think she's already testified to that counsel. Go on to something else.

MR. ULLMAN TO FEMALE RESPONDENT:

Q When you filled out the application was it your intention not to disclose this 1974 departure?

JUDGE:

Excuse me again, counsel. Let me give you the application, Exhibit No. 2A in evidence. Perhaps you may want to show that to respondent so she will know exactly what you are talking about.

MR. ULLMAN TO FEMALE RESPONDENT:

Q I'm referring to Exhibit 2A, this is your application for suspension of deportation. It says under Item No. 6 that there were no departures from the United States. Why did you not state that you had departed

the United States in 1974 for a short period of time of three months?

A (no response)

Q Do you have any recollection of this form at all?

MR. ODENCRANTZ:

Your Honor, there's a question I believe that hasn't been answered yet.

JUDGE:

Let the record show there was a long hesitation. The respondent has now picked up the application and she is studying it.

JUDGE TO MR. ULLMAN:

Perhaps you had better rephrase it again counsel.

[29] MR. ULLMAN TO FEMALE RESPONDENT:

Q Mrs. Phinpathya who prepared this form for you?

A I don't know.

Q Item No. 6. It's in English. It states that there were no departures from the United States. You stated today that you had departed the United States in 1974. Do you recollect why you did not put down that you had departed the United States in January 1974 and reentered in April of 1974?

A I forgot.

MR. ULLMAN TO JUDGE:

I have nothing further.

JUDGE:

Mr. Odencrantz.

MR. ODENCRANTZ:

Thank you, your Honor.

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q Mrs. Phinpathya when you left the United States in January of 1974 did you have a passport in your possession?

A Yes.

Q When did you get that passport?

A Thai Consulate.

Q When—did you get it?

A I couldn't recollect.

Q How long before you left the United States prior to that trip in January of 1974, did you pick up the passport at the Thai Consulate?

A One month.

[30] Q So one month before you went on the trip you went down to the Thai Consulate and you obtained a new passport. Is that right?

A Yes.

Q When you went to Thailand you had your new passport with you. Is that correct?

A Yes.

Q Where was your old passport?

A I don't know. I forgot.

Q When you left the United States did you purchase a ticket?

A No.

Q How did you get on the airplane if you didn't have a ticket?

JUDGE:

Excuse me Mr. Odencrantz.

JUDGE TO FEMALE RESPONDENT:

Q Did you travel alone to Thailand?

A With my children.

Q Your children went with you?

A Yes.

Q Both children?

A Yes.

Q Did your husband remain in the United States?

A Yes.

Q Did your husband buy the airplane ticket for you and your children?

A Yes.

JUDGE:

Mr. Odencrantz.

[31] MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q Mrs. Phinpathya when you got to Thailand and you wanted to come back to the United States did you use the same passport?

A Yes.

Q Did you go to the American Consulate to get a new visa for that passport?

A Yes.

Q Did you tell them your husband was a student?

A Yes.

Q Is that why you were issued a passport?

JUDGE:

Passport or the visa?

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q Oh, excuse me. The visa, excuse me.

JUDGE:

You're talking now about the American Consulate in Thailand?

MR. ODENCRANTZ:

Yes, your Honor.

JUDGE:

Very well. Would you rephrase the question again?

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q Mrs. Phinpathya is that why the American Consulate in Bangkok gave you a new visa for your passport?

A Yes.

Q Mrs. Phinpathya in 1975 was your husband going to school?

A Yes. Since 1974.

[32] Q Where was your husband going to school in 1975?

A Pacific—

MR. ODENCRANTZ TO JUDGE:

Your Honor, respondent's spouse continues to help her with her testimony and I think it's improper that he do that.

JUDGE TO MR. ULLMAN:

Yes, perhaps counsel, we should have the male respondent sit on the other side of you.

JUDGE:

Let the record show that the male respondent has changed his chair and the female respondent is now seated right next to counsel.

JUDGE TO MR. ODENCRANTZ:

Go right ahead Mr. Odencrantz.

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q In 1975 was your husband going to school, and if so, where?

JUDGE:

Do you mean '74 or '75. She came back in '74.

MR. ODENCRANTZ:

I'm sorry, your Honor; '74, yes. Thank you for correcting me.

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q In 1974?

A Pacific State University.

Q Isn't it true that at that time he was working for Ralphs Grocery Company as a produce clerk?

A Yes.

Q Isn't it also true Mrs. Phinpathya that your husband had no permission [33] to be—no extension of stay as student here in the United States subsequent to 1971?

A Yes.

Q Did you know this when you went to Thailand?

A Yes.

JUDGE TO FEMALE RESPONDENT:

Q You just nodded your head up and down and the interpreter said yes. From now on open your mouth and say something in the Thai language; don't just nod your head. Say yes or no, or give an answer. Do you understand Ma'am?

A Yes, I understand.

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q Did you tell the American consulate in Bangkok, Thailand when you got your new visa that your husband was no longer an in status student in the United States?

A No, I didn't explain to American Consulate section in Bangkok but I got I-20, see?

Q Mrs. Phinpathya in the deportation hearing which was held on March 1, 1978, did the Immigration Judge go over the application with you?

A I don't know.

JUDGE:

Excuse me. I think at this time we'll take a brief recess while while we play the relevant portions of the tape from March 1st.

BRIEF RECESS

JUDGE:

Back on the record. Let the record show that the parties are the [34] same. We attempted to obtain the cassette tape for March 1, 1978, however, it was checked out by the Steno Pool. And when checking with the Steno Pool it turned out that it had been sent down to San Ysidro, California to some transcribers there who are handling some hearings. Apparently, there is another hearing of mine on that same cassette which is now being typed. So the tape is not available at this time.

JUDGE TO FEMALE RESPONDENT:

Q Mrs. Phinpathya on March 1, 1978 you signed this application after swearing to it before me. Is that true?—I'm showing you now Exhibit No. 2A.

A Yes.

Q And I did ask you many of the questions on that form including whether you had been out of the United States since 1969. Is that true?

A At that time I did not understand.

JUDGE:

All right Mr. Odencrantz, go ahead.

MR. ODENCRANTZ:

Thank you, your Honor.

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q Mrs. Phinpathya why didn't you tell the Immigration Judge that you had been outside the United States on this trip, that we have been talking about for the last half hour? Why didn't you tell the Judge, Mrs. Phinpathya about the trip that you had made outside of the United States on March 1, 1978, when you appeared before him and gave testimony [35] under oath?

A I do not understand that at that time.

Q Was this not read to you by the interpreter on March 1, 1978?

JUDGE:

Are you referring to exhibit 2A?

MR. ODENCRANTZ TO FEMALE RESPONDENT:

Q I'm referring to Exhibit No. 2A. Isn't it true that the Immigration Judge went over this application with you and that the questions and answers on the application were interpreted for you by the Thai interpreter on that day?

A Yes.

Q Then why didn't you tell the Immigration Judge about your trip in 1974?

A At that time I still did not understand and I thought that the question meant start from 1969.

Q I notice that this document is typed. Did you type this document?

A I don't know.

MR. ULLMAN:

If I can be of any assistance at this time, it was typed by one of the secretary's in our office. Generally, our office procedure is we have them fill out an application in their handwriting and then it's typed onto a form.

MR. ODENCPANTZ TO FEMALE RESPONDENT:

Q Did you fill out an application in your own handwriting and give it [36] to Mr. Greenberg's secretary?

A I forgot already. It quite a long time ago.

MR. ODENCRANTZ TO JUDGE:

Your Honor, I really have no further questions on this issue at this time. It's still the opinion of the Service Mrs. Phinpathya has given false testimony to obtain a benefit, to wit, the suspension for deportation for which she is now applying. And that no credible explanation has been advanced as to anything which would be excusable. And I believe your Honor, that she is statutorily ineligible both for this reason and based upon the testimony which has been elicited because of her departure from the United States not being within the ambit of *Wadman v. INS*. She has departed the United States for a substantial period of time. She used travel documents. She obtained a

passport just before she left the United States to depart. She went to the American Consul abroad and obtained a new visa to put in that passport. And in fact your Honor, when she went outside the United States it is the Government's position she had no reasonable expectation that she would be able to return because she did not have a visa and would have to get a visa even though her husband were—as she said she knew at the time she left, was out of status. And therefore she was statutorily ineligible to obtain a visa as an F-2. I think your Honor, that she is statutorily ineligible.

MR. ULLMAN TO JUDGE:

I believe you can tell by Mrs. Phinpathya's testimony that she really doesn't remember that time that she filled out the application [37] and she really doesn't even remember at the time of the last hearing on March 1st. I wasn't present at that time so I really don't know if the application was gone over word for word; whether it was explained to her that there were any departures or if there were any. I think she is very shy at the moment and—

JUDGE:

I routinely cover that in my own questioning for my own benefit. I'm sorry we don't have the tape available today for both your benefit and Mr. Odencrantz' benefit and the respondent's; not only the questions to her on the issue of the break in physical presence but also Mr. Karp's response after the investigation report now in evidence as Exhibit No. 12. I assume Mr. Karp kept some notes which you've had an opportunity to look at. And that the trial attorney at that time, Mr. Fong, has made notes which Mr. Odencrantz has had an opportunity to read. But in any case Mr. Odencrantz has covered two issues here and do you wish to make a response to those issues at this time? Or do you wish to put on further evidence regarding those issues or other issues in this case?

MR. ULLMAN:

At this time I believe that Mrs. Phinpathya is recanting on her statement on the form for suspension

of deportation that she had departed the United States in 1974. I believe it was a brief and casual departure. She left for a period of three months. Her family was here. She had a home here. Her husband had been working here in the United States and she intended to return to the United States. It was a brief departure to visit her mother and she took [38] the two children with her and then she returned within a three month period of time. Her husband, Mr. Phinpathya, has been continuously in the United States since 1968 and again for family unity, even if you find that there is a break in the continuity of her presence in the United States for humanitarian reasons, I request that you keep the family together and consider their application; her part of her husband's application.

MR. ODENCRANTZ:

Your Honor, I don't believe the Court has any right to make any personally derivative beneficiary of an application for suspension of deportation. This in responding to the very last item Mr. Ullman is stating to. She of course is a case entirely separate and apart from her husband's status. Also, I will take issue with just one thing. We have no evidence that it was under three months. We have evidence that she left in January of '74 and returned April 18, 1974. So the period can either be somewhat less than three months or somewhat more than three months; as much as possibly 18 days more than three months. I think it's not necessarily significant but of course the respondent bears the burden of proof on any time which is alleged. The Service has proven she came back April 18th.

JUDGE:

Very Well.

* * * * *

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. A21 272 984

In the Matter of Mrs. Padungsri PHINPATHYA
616 North Virgil, Apartment 4
Los Angeles, California 90004 AKA: Padungsri RUNGRUANGRONG
Address (number, street, city, state, and ZIP code)

Respondent.

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

A

1. You are not a citizen or national of the United States;
2. You are a native of Thailand and a citizen of Thailand;
3. You entered the United States at Honolulu, Hawaii on or about October 11, 1969 (date)
4. You were admitted as a nonimmigrant student for a temporary period and authorized to remain in the United States until July 25, 1971;
5. You have not departed from the United States.

See Legal Charge Form

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

A Section 241 (a) (2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Section 101 (a) (15) of said act, you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 300 North Los Angeles Street, Los Angeles, California, Room 8112 on February 24, 1977 at 8:30 a.m. m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: January 25, 1977

(signature and title of issuing officer)
ASSISTANT DISTRICT DIRECTOR FOR INVESTIGATIONS
LOS ANGELES, CALIFORNIA
(City and state)

cc: Bert D. Greenberg, Esquire

459 - 1
560 - 1
819 - 2
998 - 1 and 2

I-A
Dec 24 1977

Form I-221 (Rev. 7-1-73)Y 1130-1-2

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

Failure to attend the hearing at the time and place designated hereon may result in your arrest and detention by the Immigration and Naturalization Service.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

_____
(signature of respondent)

Before:

_____ _____
(signature and title of witnessing officer) (date)

CERTIFICATE OF SERVICE

This order and notice were served by me on 27 JAN 1977 (date) in the following manner:

A Ochoa
(signature and title of employee or officer)

MAIL

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Form approved.
OMB No. 43-R0334

File No. A 21 272 984

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN FORM)

FEE STAMP

(1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my children
(Husband, wife, father, mother, child, children)

who is/are ☑ citizen(s) ☐ lawful permanent resident(s) of the United States; and I have been physically present in the United States without any absence since October 12, 1969

(2a) My present legal name is: (First, Middle, Last) PADUNGSRI PHUPANYA			(2b) My name given at birth was: Padungsri Tumyruangrong		
(3) I have been known by the additional names: None	My sex is Female	(Height) 5'	(Color of eyes) Brown	(Color of hair) Black	(Complexion) Brown
(4) I was born at (Place and country) Samutprakarn, Thailand	on (Month) (Day) (Year) 4/10/48	My nationality is (Country of which citizen or subject) Thailand			
(5) I now reside at (Apt. number and/or in care of) (Number and street) 7515 Bellaire Avenue, North Hollywood, (City or town) California (State) 91605 (ZIP Code)					

(6) I first entered the United States under the name of (First) Padungsri (Middle) Tumyruangrong (Last)	on (Month) (Day) (Year) 10/11/69	At (seaport, airport, or land border port) Honolulu, Hawaii	
Name of vessel or other means of conveyance Japan Air Lines	I was admitted as a (Insert visitor, crewman, transient, student, permanent resident, or other) I-1		
For a period of time to expire (Insert date of period for which admitted) I-94 unavailable	My last extension of stay in the United States expired on (date) 7/[illegible]/71		
If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible			

Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates: (If you have never departed from the United States since your original date of entry, insert "no departures.")

DEPARTED		RETURNED		INSPECTED AND ADMITTED (Answer Yes or No)
PORT	DATE (Month–Day–Year)	PORT	DATE (Month–Day–Year)	
No departures				

155

(7) During the last 10 years, I have been in the United States as listed below: (If less than 10 years, set forth the information for the period you have been in the United States.) List present address FIRST, and work back.

STREET AND NUMBER–CITY OR TOWN–STATE (Include number of hotel room, furnished room or apartment in present address.)	FROM– Month	FROM– Year	TO– Month	TO– Year
7515 Bellaire Ave., North Hollywood, Ca.	9	76	present	
616 N. Virgil Avenue, #4, Los Angeles, Ca.	8	72	8	76
826 S. Union Avenue, Los Angeles, Ca.	10	69	8	72

(Use a separate sheet for additional entries.)

EXHIBIT No. 1-A
MAR 1 1978
(Date)

Form I-256A
(Rev. 6-1-75)N

(1)

81

(8) During my residence at the places in the United States named above I was employed by the following-named persons or firms: (Begin with present employment and proceed backwards. Any periods of unemployment or school attendance should be specified.

Full Name of Employer	Address of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From— Month	From— Year	To— Month	To— Year
None							

(Use a separate sheet for additional entries.)

(9) If self-employed, describe nature of business, name under which business is conducted, its address and net income derived therefrom _____
coffee shop, Premiere Coffee Shop, 5333 Hollywood Blvd., Hollywood, Ca. $1,500/mo.

(10) I: ☒ AM ☐ AM NOT MARRIED	If married, the name of my spouse is	We were married on (Month) (Day) (Year)	at (City or town) (State or country)
	Niyom	2/19/70	Los Angeles, California
She or he was born at (City or town) (State or country)		on (Month) (Day) (Year)	and is a citizen of (Country)
Nakornnayok, Thailand		12/[illegible]/38	Thailand
(11) (If your spouse is other than a native born United States citizen, answer the following.) She or he arrived in the United States at (City or town)		on (Month) (Day) (Year)	☐ was ☒ was not admitted for permanent residence.
Honolulu, Hawaii		/,/	
was naturalized on (Month) (Day) (Year)		(Place naturalized)	

(12) I ☐ have ☒ have not been previously married. (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage) _____

(13) My present spouse ☐ has ☐ has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage) _____

(14) My spouse ☐ is ☐ is not employed. If employed, give salary and name and address of place of employment _____
~~Ralph's Grocery Co., 10544 Burbill Ave., Burbank, Ca., $[illegible]/mo.~~

(15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse):

Cash, Stocks and Bonds	$ 4,000.00	Cash, Stocks and Bonds	$
Real Estate	$ 60,000.00	Real Estate	$
Other (Describe) car	$ 5,000.00	Other (Describe)	$
Total	$ 69,000.00	Total	$

(16) I have 2 children. Give information requested in each column:

Name	Age	Place of Birth	Now Residing at—	Citizen of	Lawful Permanent Resident of U.S.
~~Nissa~~	~~7~~	~~California~~	~~North Hollywood, Ca.~~	~~USA~~	
~~Nelson~~	~~5~~	~~California~~	~~North Hollywood, Ca.~~	~~USA~~	

The names, assets, and earnings of my children in the United States who have separate incomes are: _____

not applicable

(17) I ☐ have ☒ have not after entry into the United States acquired the status of an exchange alien.

(18) I ☐ have ☒ have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 23, 1950, and the Immigration and Nationality Act.

(19) I ☐ have ☒ have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received _____

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.) not applicable

Date and place of entry on duty _____ Date of discharge _____

Type of discharge (honorable, dishonorable, etc.) _____ I served in active duty status from _____ to _____.

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes ☐ No ☐

If "Yes," give date, Selective Service number, local draft board number and your last draft classification. not applicable

Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes ☐ No ☐

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☒

(23) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes ☐ No ☒

(24) List membership, past or present, in all organizations, societies, clubs, unions, and associations, whether in the United States or a foreign country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any section, subsidiary, branch, affiliate, or subdivision of any such party or organization:

None

(25) I ☐ have ☒ have never (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following _____

(Use a separate sheet for additional entries.)

(26) I can return to my country of ☐ Birth ☐ Nationality ☐ Last Residence without fear of persecution. If unable to return to any (Check the appropriate block or blocks)

of these countries, give reasons _____

(27) I ☒ would ☐ would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain: _____

(28) Give the requested information about your parents, brothers, and sisters. As to residence, show street address, city, and state, if in the United States; otherwise show only country.

Name	Relationship To Me	Now Residing At	Birthplace	Citizen Of	Lawful Permanent Resident of U.S.?
Siankia	father	Thailand	Thailand	Thailand	no
Nonkyo	mother	thailand	Thailand	Thailand	no
Chindarat	sister	Thailand	Thailand	Thailand	no
Vijai	brother	Thailand	Thailand	Thailand	no
Padungporn	sister	Thailand	Thailand	Thailand	no
Songsax	brother	Los Angeles, California	Thailand	Thailand	no
Pairote	brother	Thailand	Thailand	Thailand	no
Songyod	brother	Thailand	Thailand	Thailand	no

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country _____

(30) My father ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(31) My mother ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(32) The assets of my parents (not including clothing and household necessities) are:

Assets of father consist of the following:		Assets of mother consist of the following:	
Cash, Stocks and Bonds	$	Cash, Stocks and Bonds	$
Real Estate	$	Real Estate	$
Other (Describe)	$	Other (Describe)	$
Total	$	Total	$

(33) The following certificates or other documents are attached hereto as a part of this application: (Refer to instruction 2 for documents which must be attached.)

Nature of Document

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE)

I do swear (affirm) that the contents of the above application, with corrections numbered (/) to ( ), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name: So Help Me God.

x _____
(Complete and true signature of applicant or parent or guardian)

Subscribed and sworn to before me by the above-named applicant at LOS ANGELES, CALIF.

this _____ day of MAR 1 1978, 19____

_____
Immigration Judge

STATE OF CALIFORNIA

ss.

COUNTY OF LOS ANGELES

AFFIDAVIT

I, Padungsri Phinpathya, after having been duly sworn hereby depose and say:

That I am currently residing at 7515 Bellaire Avenue, North Hollywood, California 91605;

That I was born on April 10, 1948 in Samutprakarn, Thailand and am a citizen of Thailand;

That I married my husband, Niyon Phinpathya, on February 19, 1970 in Los Angeles, California;

That we have two children, Nissa and Nelson born in Los Angeles, California on September 11, 1970 and February 19, 1972 respectively and copies of their birth certificates are hereto attached;

That if I am forced to depart from the United States, I fear my American citizen children will lose their birth rights;

That my daughter Nissa is an epileptic currently receiving excellent medical care and attention from Dr. V. Vadakan, Department of Pediatrics, at Kaiser-Permanente Medical Center;

That I am extremely afraid, is we are forced to depart from the United States, I would also be forced to continue medical treatment for my child in Thailand where the medical facilities does not compare to what she is receiving in the United States;

That my husband and I have purchased a house where our entire family resides in as our home;

That my husband and I have also invested in a business enterprise known as "Premiere Coffee Shop" located at 5333 Hollywood Boulevard, Hollywood, of which I am the cook and the principal manager;

That our investment in this coffee shop has been an integral part of our support for our family;

That I am now accustomed to the American way of life after so many years and would find it difficult to return to the way of life in Thailand;

That I specially fear that my children who have never known any other way of life would be extremely affected by the abrupt change in their environment more so for my afflicted daughter;

That I have adhered to the American Constitution and have abided by its Laws;

That the radical element is now gaining control in Thailand, the government is decidedly anti-American and has forced the withdrawal of the United States military support;

That to enforce my departure from the United States would cause grave hardship physically, emotionally, mentally and financially to my children, my husband and myself;

That this affidavit is submitted in support of the Application for Suspension of Deportation filed on the basis that I have continuously lived in the United States since October 12, 1969;

That I request the Immigration & Naturalization Service to consider my Application for Suspension or Deportation and grant me permission to stay;

That I declare the foregoing statements to be true and correct and given under oath and to the best of my ability.

/s/ PADUNGSRI PHINPATHYA

PADUNGSRI PHINPATHYA

DATED: March 4, 1977.

Subscribed and sworn to before me this 4th day of March, 1977 at Beverly Hills, California.

/s/ MARIA E. PEAK,

MARIA E. PEAK,
Notary Public

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

REPORT OF INVESTIGATION

Title	File Number
(1) PHINPATHYA, Niyom (Husband)	(1) A19 063 381
(2) PHINPATHYA, Padungsri (Wife)	(2) A21 272 984

REPORT MADE AT	DATE	BY
LOS ANGELES	9/19/77	/s/ PATRICK J. WALTERS *Investigator*

SYNOPSIS

SUBJECT Niyom PHINPATHYA is a 39 year old male native and citizen of Thailand, last entered the United States as a student on 8/3/68. He is married to SUBJECT Padungsri PHINPATHYA, also a native and citizen of Thailand, 29 years of age.

Both SUBJECTS are applicants for suspension of deportation.

Investigation disclosed that SUBJECT PADUNGSRI PHINPATHYA is not eligible for suspension of deportation. Her last entry into the United States was made on 4/18/74, as the wife of a student.

Neighborhood and employment checks completed.

Police agency checks completed.

DETAILS

File A19 063 381 relates to SUBJECT NIYOM PHINPATHYA and reflects that he is a 39 year old male, native and citizen of Thailand by birth in Nakornnayok, Thailand on 12/19/38. The file further reflects that he was admitted to the United States as a student at Honolulu, Hawaii on 8/3/68, with extensions of stay granted to 7/25/71. He is currently an applicant for suspension of deportation.

File A21 272 984 relates to SUBJECT PADUNGSRI PHINPATHYA and reflects that she is a 29 year old female, native and citizen of Thailand by birth in Samutprakarn, Thailand on 4/10/48. File further reflects that she married SUBJECT NIYOM PHINPATHYA in Los Angeles California on 2/19/70 and that they have two United States citizen children.

SUBJECT PADUNGSRI PHINPATHYA'S file contains Form I-256A, Application for Suspension of Deportation which reflects her last entry into the United States as 10/11/69 at Honolulu, Hawaii as a student. The application further reflects that she has not departed from the United States, and that her I-94 is not available.

On 8/15/77 Central Office arrival and departure records were checked and reflected that SUBJECT NIYON PHINPATHYA'S last entry into the United States was on 8/3/68. Attached as Exhibit "A" are copies of his I-94 and subsequent extensions of stay.

Arrival records relating to SUBJECT PADUNGSRI PHINPATHYA reflected that she was last admitted to the United States as the wife of a student at Honolulu, Hawaii on 4/19/74. Attached as Exhibit "B" is a copy of the relating I-94.

In view of this last entry, SUBJECT PADUNGSRI PHINPATHYA is ineligible for benefits if Section 244 of the Act.

On 8/18/77 Blanca PASOS, United States citizen neighbor of SUBJECTS, was interviewed at her residence, 7511 Bellaire Avenue, North Hollywood. She stated that she has lived there for three years, that she seldom sees either

SUBJECT but that they have never caused any problems and seem to be nice people.

On the same date, Donald F. ZELLER, United States citizen neighbor, was interviewed at his residence, 7521 Bellaire Avenue. He stated that he is a retired U.S. Army Major, that he knows SUBJECTS and that they are good neighbors.

On the same date, Samuel and Catherine MAZZA, United States citizens, were interviewed at their residence, 7051 Coldwater Canyon Road, North Hollywood. They stated that they know SUBJECT personally, that SUBJECTS are good neighbors and nice people, made no derogatory statements.

On 8/30/77 Kenton PIGG, United States citizen manager, was interviewed at his place of business, Ralph's Market, 10544 Sunland Boulevard, Sunland. He stated that SUBJECT NIYOM PHINPATHYA is employed there as a produce clerk and is an excellent employee. Witness stated that SUBJECT NIYOM PHINPATHYA has been employed there for one year, but has been employed by the Ralph's Market chain for nine years.

On 9/7/77 SHERI CANTISANO, personnel clerk, was interviewed at her office, 1100 West Artesia Boulevard, Compton, Ralph's Markets Executive Center. She stated that company records relating to SUBJECT NIYOM PHINPATHYA reflect that he has been employed continuously since 6/27/69 with no breaks in employment.

On 9/12/77 RICHARD VELA, United States citizen, was interviewed at his residence at 616 North Virgil Avenue, Los Angeles, #3. He stated that SUBJECTS had lived next door to him in #4 for one year and had been good neighbors and had not caused any problems.

On the same date, the manager at 616 North Virgin, HAROLD PORTER, was interviewed at that location, #1. He stated that SUBJECTS had been excellent tenants for the two years that they had lived there, and that he had never had any complaints from anyone regarding SUBJECTS. He stated that they had moved out to buy a home.

On 9/14/77 VIRGINIA SERRANO, United States citizen owner of the apartment building located at 826 South Union

Avenue, Los Angeles was contacted at 726-2981. She stated that she had just purchased the building in June 1977, that all the tenants were new. She provided the name and address of the former owner.

On 9/14/77 PAUL RUNGE was interviewed at his residence, 2164 Hillsbury Road, Westlake Village. He stated that he had owned and lived in the building at 826 South Union Avenue, that he remembered SUBJECTS, that they had been good tenants. Witness made no derogatory statements relating to SUBJECTS.

On 9/14/77 SUBJECT PADUNGSRI PHINPATHYA was interviewed at her place of business, Premiere Coffee Shop, 5333 Hollywood Boulevard, Los Angeles. She provided a copy of their 1976 Income Tax Return, which is attached as Exhibit "C". The return reflects that her husband earned $13,581.84 in wages from Ralph's last year.

Local police agency checks completed with no record relating to SUBJECTS.

Los Angeles, Calif. 9/19/77
A19 063 381

EXHIBIT "B"

Los Angeles, Calif. | Report 9/19/77

Los Angeles, Calif. A19 063 381

Exhibit Identification Form G 166-B (1 1-54) FPI-LC-1-78-15,800-6253

Family Name (Capital Letters)	First Name	Middle Initial	
DHINPATHYA	PADUNASRI		P.513

Country of Citizenship	Passport or Alien Registration Number	Permit Number
THAILAND	C 35673	106 33 43

* United States Address (Number, Street, City and State) PACIFIC SIGHT & HEARING
116 NORTH VIRGIL AVE. L.A. CALIF. 900

* * Airline and Flight No. or Vessel of Arrival
AIR SIAM VG 602

* * Passenger Boarded at
BANGKOK THAILAND

Number, Street, City, Province or State and Country of Permanent Residence
46 [illegible] BANGKOK THAILAND

Month, Day and Year of Birth
4-10-48

City, Province (State) and Country of Birth

Visa Issued at

STAPLE HERE

Month, Day and Year Visa Issued
[illegible] 74

U.S. IMMIGRATION
170 HHW 1035
APR 18 1974
ADMITTED F-2
UNTIL JAN 30, 1975

FORM I-94 (REV. 8-1-73)

[redacted]

UNITED STATES OF AMERICA:

File No. A21 272 984

In the Matter of

Padungsuzi Phinpathya
C/O Immigration & Naturalization Service
Los Angeles, California 90012

Respondent.

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

ADDITIONAL CHARGES OF DEPORTABILITY

To: ..... (name)

..... (address)

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

In support of the additional charge(s) there is submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

In lieu of allegations No. 3 & 4 on the Order to Show Cause, the following:

3. You entered the United States at Honolulu, Hawaii on or about April 18, 1974.

4. You were admitted as a nonimmigrant spouse of a student for a temporary period and authorized to remain in the United States until January 30, 1975.

March 1, 1978

Form I-261
(Rev. 12-15-64)

Supreme Court of the United States

No. 82-91

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER,

v.

PADUNGSRI PHINPATHYA

ORDER ALLOWING CERTIORARI. Filed November 1, 1982.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.